

110TH CONGRESS
2D SESSION

H. R. 7193

To require a report on business and investment climates in foreign countries,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2008

Mr. SHERMAN (for himself and Mr. ROYCE) introduced the following bill;
which was referred to the Committee on Foreign Affairs

A BILL

To require a report on business and investment climates
in foreign countries, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ANNUAL COUNTRY REPORTS ON BUSINESS AND**
4 **INVESTMENT CLIMATES.**

5 (a) ANNUAL COUNTRY REPORTS ON BUSINESS AND
6 INVESTMENT CLIMATES.—Not later than September 1 of
7 each year, the Secretary of State, in consultation with the
8 Assistant Secretary of State for Economic, Energy and
9 Business Affairs, as well as the Assistant Secretary of
10 Commerce for Trade Promotion and the Director General

1 of the Foreign Commercial Service, shall submit to the
2 Committee on Foreign Affairs of the House of Representa-
3 tives and the Committee on Foreign Relations of the Sen-
4 ate a report providing—

5 (1) detailed assessments with respect to each
6 foreign country—

7 (A) in which acts of unfair business and
8 investment practices or other acts that have re-
9 sulted in poor business and investment climates
10 were, in the opinion of the Secretary, of major
11 significance; and

12 (B) which the Secretary determines should
13 be the subject of such a report;

14 (2) all relevant information about such unfair
15 business and investment practices or other actions
16 during the preceding year by members of the busi-
17 ness community, the judiciary, and the government
18 of such country which may have impeded United
19 States business or investment in such country, in-
20 cluding the capacity for United States citizens to op-
21 erate their businesses without fear of reprisals; and

22 (3) with respect to each foreign country from
23 which the United States Government has sought co-
24 operation to assemble the annual country-specific in-
25 vestment climate reports required under this section

1 and address issues of unfair business and investment
2 practices, information on—

3 (A) the extent to which the government of
4 each such foreign country is working to prevent
5 unfair business and investment practices; and

6 (B) the extent of United States Govern-
7 ment action to prevent unfair business and in-
8 vestment practices or other actions that harm
9 United States business or investment interests
10 in relevant cases.

11 (b) PROVISIONS TO BE INCLUDED IN THE RE-
12 PORT.—The report under subsection (a) should, to the ex-
13 tent feasible, include—

14 (1) with respect to subsection (a)(1)(A)—

15 (A) a review of the efforts undertaken by
16 foreign countries to promote a healthy business
17 and investment climate that is also conducive to
18 the United States business community and
19 United States investors, including, as appro-
20 priate, steps taken in international fora;

21 (B) the response of the judicial and local
22 arbitration systems of each foreign country that
23 is the subject of such report with respect to
24 matters relating to the business and investment
25 climates affecting United States citizens and

1 entities, or that have, in the opinion of the Sec-
2 retary, and in consultation with the Director
3 General of the Foreign Commercial Service, a
4 significant impact on United States business
5 and investment efforts; and

6 (C) each foreign country's access to the
7 United States market;

8 (2) with respect to subsection (a)(2), any—

9 (A) actions undertaken by governments of
10 foreign countries that prevent United States
11 citizens and businesses from receiving equitable
12 treatment;

13 (B) actions taken by private businesses
14 and citizens of foreign countries against mem-
15 bers of the United States business community
16 and United States investors;

17 (C) unfair decisions rendered by the legal
18 systems of foreign countries that clearly benefit
19 state and local corporations and industries; and

20 (D) unfair decisions rendered by local arbi-
21 tration panels of foreign countries that do not
22 exemplify objectivity and do not provide an eq-
23 uitable ground for United States citizens and
24 businesses to address their disputes; and

1 (3) with respect to subsection (a)(3)(A), actions
2 taken by the United States Government to—

3 (A) promote the rule of law, in general;

4 (B) prevent discriminatory treatment of
5 United States citizens and businesses engaged
6 in business or investment activities;

7 (C) allow United States goods to enter for-
8 eign countries without requiring a co-production
9 agreement.; and

10 (D) protect United States intellectual
11 property rights.

12 (c) PREPARATION OF REPORTS REGARDING BUSI-
13 NESS AND INVESTMENT CLIMATES.—

14 (1) STANDARDS AND INVESTIGATIONS.—The
15 Secretary of State shall ensure that the United
16 States diplomatic and consular missions abroad
17 maintain a consistent reporting standard and thor-
18 oughly investigate reports of unfair business and in-
19 vestment practices or any other actions that impede
20 a strong business or investment climate in the coun-
21 tries in which such missions are located.

22 (2) UPDATING INFORMATION BASED ON FOR-
23 EIGN COUNTRY MEDIA.—In compiling data and as-
24 sessing the business and investment climates abroad
25 for each report required under subsection (a),

1 United States foreign service officers shall, as appro-
2 priate and with respect to the foreign country in
3 which such officers are posted, research such coun-
4 try's media sources, including newspaper, radio, tele-
5 vision, to document any cases with evidence of un-
6 fair business or investment practices or any occur-
7 rences that may destabilize the business or invest-
8 ment climate in such country.

9 (3) CONTACTS WITH BUSINESS LEADERS.—In
10 compiling data and assessing the business and in-
11 vestment climates abroad for each report required
12 under subsection (a), United States foreign service
13 officers shall, as appropriate and with respect to the
14 foreign country in which such officers are posted,
15 seek out and maintain contacts with corporate lead-
16 ers in all sectors of the market of such country to
17 discuss issues of foreign direct investment and the
18 challenges United States citizens or businesses may
19 face in making investments or earning returns on in-
20 vestments.

21 (4) CONTACTS WITH UNION LEADERS.—In com-
22 piling data and assessing the business and invest-
23 ment climates abroad for each report required under
24 subsection (a), United States foreign service officers
25 shall, as appropriate and with respect to the foreign

1 country in which such officers are posted, seek out
2 and maintain contacts with leaders of local and na-
3 tional unions of such country to assess the political
4 stability of such country as measured through social
5 cohesion and the rights of workers.

6 (5) CONTACTS WITH THE JUDICIARY.—In com-
7 piling data and assessing the business and invest-
8 ment climates abroad for each report required under
9 subsection (a), United States foreign service officers
10 shall, as appropriate and with respect to the foreign
11 country in which such officers are posted, seek out
12 and maintain contacts with members of the judiciary
13 system of such country to evaluate the capacity of
14 the legal institutions to address discrepancies and
15 disputes that may arise, including corruption and
16 nationalization. Such officers shall also research the
17 capacity for arbitration locally to address concerns if
18 such country's legal system is unable to provide suit-
19 able or satisfactory recourse in a matter relating to
20 an unfair business or investment practice involving
21 a United States citizen or business.

22 (6) CONTACTS WITH NONGOVERNMENTAL OR-
23 GANIZATIONS.—In compiling data and assessing the
24 business and investment climates abroad for each re-
25 port required under subsection (a), United States

1 foreign service officers shall, as appropriate and with
2 respect to the foreign country in which such officers
3 are posted, seek out and maintain contacts with
4 member of nongovernmental organizations in such
5 country that address the concerns of the business
6 community, with the consent of those organizations,
7 including receiving reports and updates from such
8 organizations and, when appropriate, investigating
9 such reports.

10 (d) CLASSIFICATION OF REPORT.—

11 (1) IN GENERAL.—A report required under sub-
12 section (a) of this section shall, to the extent prac-
13 ticable, be submitted in an unclassified form but
14 may be accompanied by a classified appendix if the
15 Secretary of State determines that such is appro-
16 priate.

17 (2) COOPERATION.—If the Secretary of State
18 determines that the submission of any information
19 with respect to a foreign country under paragraph
20 (3) of subsection (a) of this section in classified form
21 would make more likely the cooperation of the gov-
22 ernment of such foreign country, the Secretary may
23 submit such information in classified form.

24 (3) SUMMARIZATION.—If the Secretary of State
25 determines that it is in the national security inter-

1 ests of the United States or is necessary for the
2 safety of individuals or entities to be identified in a
3 report required under subsection (a) or is necessary
4 to further the purposes of this Act, any information
5 required by subsection (a), including measures taken
6 by the United States, may be summarized in such
7 report and submitted in more detail in a classified
8 addendum.

9 **SEC. 2. BUSINESS AND INVESTMENT CLIMATE WARNINGS.**

10 (a) IN GENERAL.—The Secretary of State, with the
11 assistance of the Assistant Secretary of State for Eco-
12 nomic, Energy and Business Affairs, as well as the Assist-
13 ant Secretary of Commerce for Trade Promotion and the
14 Director General of the Foreign Commercial Service, shall
15 establish a system that informs members of the United
16 States business community and United States investors
17 prior to their entry into a foreign country of the business
18 and investment conditions in such country.

19 (b) WARNINGS.—The system established under sub-
20 section (a) shall, if appropriate, issue investment warn-
21 ings—

22 (1) to describe long-term, protracted conditions
23 that make a country's business or investment cli-
24 mate risky or potentially dangerous to members of

1 the United States business community and United
2 States investors; or

3 (2) when the ability of the United States Gov-
4 ernment to assist such members and investors is
5 constrained due to the closure of a United States
6 diplomatic or consular mission in such country.

7 (c) FOUR-TIER SYSTEM.—

8 (1) IN GENERAL.—The Secretary of State and
9 the Secretary of Commerce shall develop a four-tier
10 system to grade the business and investment climate
11 of each country that receives over \$5,000,000,000 in
12 exports, aid, and remittances from the United
13 States, based on the following criteria:

14 (A) Political stability.

15 (B) Macroeconomic stability.

16 (C) Rule of law.

17 (D) Corruption and transparency.

18 (E) Regulatory quality.

19 (F) Good governance.

20 (G) Civil society engagement.

21 (2) ADDITIONAL CRITERIA.—The grading with-
22 in the four-tier system referred to in paragraph (1)
23 shall also address unfair business and investment
24 practices with respect to each country identified and
25 graded under such paragraph:

1 (A) Discriminatory treatment of United
2 States citizens and businesses engaged in busi-
3 ness or investment activities.

4 (B) The status of allowing United States
5 goods to enter each such country without re-
6 quiring a co-production agreement.

7 (C) Protection of United States intellectual
8 property rights.

9 (d) PUBLIC ACCESSIBILITY.—The Secretary of State
10 shall publish on the website of the Department of State
11 information on countries under this section.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) CIVIL SOCIETY ENGAGEMENT.—The term
15 “civil society engagement” means the extent to
16 which individuals exercise peacefully their rights of
17 expression, association, and assembly, including
18 through their establishing and participating in non-
19 governmental organizations, unions, and other civil
20 society organizations.

21 (2) CORRUPTION AND TRANSPARENCY.—The
22 term “corruption and transparency” means the ex-
23 tent to which public officials seek illegitimate per-
24 sonal gain, including through to bribery, extortion,
25 graft, nepotism, or embezzlement.

1 (3) CO-PRODUCTION AGREEMENT.—The term
2 “co-production agreement” means a United States
3 Government or United States business working with
4 a foreign government, foreign company, or an inter-
5 national organization to produce or manufacture an
6 item.

7 (4) GOOD GOVERNANCE.—The term “good gov-
8 ernance” means the extent which institutions are
9 sustainable and democratic, with responsive, profes-
10 sional civil services providing high quality public
11 services.

12 (5) MACROECONOMIC STABILITY.—The term
13 “macroeconomic stability” means the extent to
14 which the economy of a foreign country is vulnerable
15 to internal and external shocks.

16 (6) POLITICAL STABILITY.—The term “political
17 stability” means the likelihood that the government
18 of a foreign country will be destabilized or over-
19 thrown by unconstitutional or violent means.

20 (7) REGULATORY QUALITY.—The term “regu-
21 latory quality” means the extent to which the gov-
22 ernment of a foreign country is able to formulate
23 and implement sound policies and regulations that
24 permit and promote private sector development.

1 (8) RULE OF LAW.—The term “rule of law”
2 means the extent to which laws of a foreign country
3 are publicly promulgated, equally enforced, inde-
4 pendently adjudicated, and are consistent with inter-
5 national norms and standards.

6 (9) UNFAIR BUSINESS AND INVESTMENT PRAC-
7 TICES.—The term “unfair business and investment
8 practices” includes any of the following:

9 (A) Unlawful actions under international
10 law or the law of the foreign country taken by
11 the government of such country or by busi-
12 nesses, citizens, or other entities of such coun-
13 try that have resulted in lost assets, contracts,
14 or otherwise contributed to an inhospitable
15 business or investment climate.

16 (B) Discriminatory treatment of United
17 States businesses, whether wholly- or partially-
18 owned.

19 (C) Failure to protect intellectual property
20 rights.

21 (D) Requiring a co-production agreement
22 in order for goods from the United States to
23 enter a foreign country.

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